

ORDINANCE
OF THE MAYOR AND COUNCIL OF THE CITY OF COLLEGE PARK AMENDING
CITY CODE CHAPTER 138 “NOISE”, §§138-5, “ PROHIBITED ACTS”, 138-6,
“VIOLATIONS AND PENALTIES” AND 138-9, “IMPOSITION OF A FINE BY NOISE
CONTROL BOARD” AND CHAPTER 110, “FEES AND PENALTIES”, §110-2,
“PENALTIES”, TO CLARIFY THE CIRCUMSTANCES UNDER WHICH A NON-
RESIDENT OWNER HAS VIOLATED THE NOISE ORDINANCE, MAKE ANY
REPEAT VIOLATION WITHIN A TWELVE MONTH PERIOD SUBJECT TO AN
INCREASED FINE, AND MODIFY THE MITIGATING FACTORS THAT MAY
JUSTIFY A REDUCTION IN THE FINE FOR A VIOLATION

WHEREAS, the Local Government Article of the Annotated Code of Maryland provides that the Mayor and Council of the City of College Park, Maryland have the authority to pass such ordinances as it deems necessary to preserve peace and good order, and to protect the health, comfort and convenience of the citizens of the municipality; and

WHEREAS, the Mayor and Council determined that the residents of the City have a right to an environment that is free from noise that may jeopardize their health, general welfare or property and as a result adopted Chapter 138, “Noise”; and

WHEREAS, the Mayor and Council have determined that it is in the public interest to amend Chapter 138 to allow a violation to be issued to a non-resident owner with notice of any previous noise violations, to provide for an increased fine for any repeat violations in a twelve month period, and to modify the mitigating factors that may justify a reduction in the fine for a violation.

Section 1. **NOW THEREFORE, BE IT ORDAINED AND ENACTED**, by the Mayor and Council of the City of College Park, Maryland that Chapter 138 “Noise”, §138-5, “Prohibited acts” be, and is hereby, repealed, re-enacted and amended to read as follows:

§ 138-5. Prohibited acts.

A. Unless it is for the purpose of necessary property maintenance during the day, it shall be unlawful:

CAPS
 [Brackets]
 Asterisks * * *

: Indicate matter added to existing law.
 : Indicate matter deleted from law.
 : Indicate matter remaining unchanged in existing law but not set forth in Ordinance.

(1) For any owner or occupant of real property located within the City to make or to generate loud or raucous sound on said property, or to permit any loud or raucous sound to be made or generated on said property, so as to cause unreasonable annoyance or disturbance to others living or located nearby;

(2) For the owner or occupant of real property located within the City to make any noise or operate any sound amplifier on said property, or to permit any noise to be made or any sound amplifier to be operated on said property, so as to be clearly audible to any person located beyond the property line of such property at a level higher than 65 dBA during the day or 55 dBA during the night, as such sound may be measured from any point along the curb in front of the property line upon which the noise is being generated or at any place on adjacent property, provided that the person measuring the sound shall first obtain the permission of the adjacent property owner to enter upon said property; and

(3) ~~NO~~ FOR ANY person ~~shall~~ TO cause, suffer, allow or permit the operation of an amplified source of sound in such a manner that it raises the total sound levels to greater than the following permissible sound level limits, when measured from within a building on an adjacent property.

dBC above neighborhood residual sound level

Nights 3 dBC

All other times 6 dBC

(4) For the owner or occupant of real property located within the City to permit guests or invitees to such property to make noise on adjacent property, whether public or private, where that noise, if made or generated on the property itself, would violate subsections A(1), (2), or (3) of this section.

B. ~~[In the case of real property which is not occupied by the owner of such property], [i] It shall be unlawful for the NON-RESIDENT owner of [such] A property to permit the occupants of such property to violate the provisions of Subsection A of this section. [; provided, however, that~~ The owner ~~[of such property]~~ shall not be deemed to have violated this subsection unless THE OWNER, OR OWNER'S AGENT:

(1) ~~[Such owner or the agent of such owner shall have]~~ HAS received notice ~~[or other information,]~~ from any source, that ~~[the]~~ A CURRENT OR PRIOR occupant of such property has, OR IS ALLEGED TO HAVE, PREVIOUSLY engaged in conduct ~~[or is alleged to have engaged in conduct which]~~ THAT violates ~~[Subsection A of]~~ this section ~~[on one or more prior occasions], [without regard to]~~ REGARDLESS OF whether ~~[such conduct has been the subject of]~~ a finding of a violation ~~[of this section]~~ by the Noise Control Board or by a court of competent jurisdiction WAS MADE; or

(2) ~~[Such owner or the agent of such owner]~~ has failed to take action reasonably calculated under the circumstances to prevent a violation of this section from occurring or recurring.

C. A violation of this section shall be a municipal infraction, subject to the fine imposed by Chapter 110, Fees and Penalties.

D. Each repeat violation within a ~~[six]~~ TWELVE-month period shall give rise to a charge as set forth in Chapter 110, Fees and Penalties.

Section 2. BE IT FURTHER ORDAINED AND ENACTED, by the Mayor and Council of the City of College Park, Maryland, that Chapter 138 "Noise", §138-6, "Violations and penalties" be, and is hereby, repealed, re-enacted and amended to read as follows:

§ 138-6. Violations and penalties.

A. Code Enforcement or Law Enforcement Officer. When a City Code Enforcement Officer, or a state, county, University of Maryland or other law enforcement officer chosen by the City, determines, based upon the results of a test conducted using a calibrated sound-level meter, that noise is being or has been generated in violation of § 138-5A(2) or (3) of this chapter, he/she shall issue a municipal infraction citation to the violator(s) in accordance with the provisions of [~~Article 23A, § 3~~] §6-103 OF THE LOCAL GOVERNMENT ARTICLE of the Annotated Code of Maryland. In the event that more than one owner and/or more than one occupant of the real property is alleged to have violated the provisions of this chapter, a municipal infraction citation [~~shall~~] MAY be issued to each alleged violator.

B. – D. * * * *

E. In addition, the Public Services Director shall schedule a show-cause hearing before the College Park [~~Board of Housing Hygiene~~] ADVISORY PLANNING COMMISSION as to why the City [~~use and~~] occupancy permit for the property should not be revoked for three or more violations of the provisions of this chapter within any twelve-month period, and may otherwise request such a hearing for violations of this chapter at his/her discretion

Section 3. BE IT FURTHER ORDAINED AND ENACTED, by the Mayor and Council of the City of College Park, Maryland, that Chapter138 “Noise”, §138-9, “Imposition of a fine by Noise Control Board” be, and is hereby, repealed, re-enacted and amended to read as follows:

§ 138-9. Imposition of a fine by Noise Control Board.

A. Except as set forth in Subsection C of this section, in the event that the Board finds that a violation of § 138-5 has occurred, it shall impose the fine set forth in Chapter 110, Fees and Penalties.

B. In the event that the Board finds that the owner and the occupant of real property have each violated this chapter, the Board shall impose a fine as set forth in Chapter 110, Fees and Penalties, upon the owner and the occupant.

C. In the event that there are more than one owner and/or more than one occupant, the fine shall be imposed upon each owner and upon each occupant who has been found in violation of the this chapter, except that in the event that there is more than one occupant, the fine shall be divided proportionately among those occupants who have been found to have violated this chapter, with the amount of the fine imposed on each occupant rounded to the nearest dollar; provided, however, that in the event that the property is leased to a corporate entity, the fine for a violation by an occupant shall be imposed upon such corporate entity.

D. IF A VIOLATION IS A FIRST OFFENSE AND IS NOT EGREGIOUS, THE FOLLOWING MITIGATING FACTORS MAY BE CONSIDERED BY THE BOARD TO WARRANT ~~[The Board shall consider with respect to whether the evidence indicates that significant mitigating factors warranting a]~~ A reduction in the amount of the fine to be imposed ~~[are present]:~~

(1) ~~[Whether person subject to a fine has a past record which is free of any violation of this chapter;~~

(2) ~~Whether t]~~ The person subject to a fine has taken action reasonably calculated under the circumstances to prevent or mitigate future violations of this chapter, IS REMORSEFUL AND

HAS A PRESENT Demeanor THAT DEMONSTRATES A SINCERE DESIRE TO PREVENT FUTURE VIOLATIONS OF THIS CHAPTER;

~~{(3) Whether the present demeanor of the person subject to a fine indicates that such person is remorseful with respect to the violation and, including whether such person has apologized, prior to the hearing, to the persons who were disturbed by the violation};~~

(2) THE PERSON SUBJECT TO A FINE HAS APOLOGIZED, PRIOR TO THE HEARING, TO THE PERSON(S) WHO FILED THE COMPLAINT AND OTHER KNOWN PERSONS WHO WERE DISTURBED BY THE VIOLATION.

(3) ~~[Whether t] The violation was not so egregious or lengthy in duration. [that a reasonable person would view the violation as reprehensible]~~

E. For each factor set forth in Subsection D above which is satisfied by the evidence, the Board ~~[shall]~~ MAY reduce the fine set forth in Chapter 110, Fees and Penalties, by \$100.00~~[125]~~. IN ANY EVENT, THE MINIMUM FINE SHALL BE \$200.00.

Section 4. BE IT FURTHER ORDAINED AND ENACTED, by the Mayor and Council of the City of College Park, Maryland, that Chapter 110 “Fees and Penalties”, §110-2, “Penalties” be, and is hereby, repealed, re-enacted and amended to read as follows:

§110-2 Penalties.

Chapter/Section	Description	Fee/Interest
	* * * * *	
Ch. <u>138</u> , Noise		
§ <u>138-5</u>	Chapter:	
	Citation	\$500
	Repeat violation within any [6] 12-month period	\$1,000
	* * * * *	

Section 5. BE IT FURTHER ORDAINED AND ENACTED by the Mayor and Council of the City of College Park that, upon formal introduction of this proposed Ordinance, which shall be by way of a motion duly seconded and without any further vote, the City Clerk shall distribute a copy to each Council member and shall maintain a reasonable number of copies in the office of the City Clerk and shall publish this proposed ordinance or a fair summary thereof in a newspaper having a general circulation in the City of College Park together with a notice setting out the time and place for a public hearing thereon and for its consideration by the Council. The public hearing, hereby set for **7:30 P.M.** on the **12th** day of **July, 2016**, shall follow the publication by at least seven (7) days, may be held separately or in connection with a regular or special Council meeting and may be adjourned from time to time. All persons interested shall have an opportunity to be heard. After the hearing, the Council may adopt the proposed ordinance with or without amendments or reject it. As soon as practicable after adoption, the City Clerk shall have a fair summary of the Ordinance and notice of its adoption published in a newspaper having a general circulation in the City of College Park and available at the City's offices. This Ordinance shall become effective on _____, 2015 provided that a fair summary of this Ordinance is published at least once prior to the date of passage and once as soon as practical after the date of passage in a newspaper having general circulation in the City.

INTRODUCED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the ____ day of _____ 2016.

ADOPTED by the Mayor and Council of the City of College Park, Maryland at a regular meeting on the ____ day of _____ 2016.

EFFECTIVE the ____ day of _____, 2016.

ATTEST:

CITY OF COLLEGE PARK

Janeen S. Miller, CMC, City Clerk

Patrick L. Wojahn, Mayor

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:**

Suellen M. Ferguson, City Attorney